THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.887 of 2004

13th September 2006

Between:

1. The Director, Indian Medicines & Homeopathy Department, Andhra Pradesh, Secunderabad.

And two others.

...PETITIONERS

AND

Dr.M.A.Hafeez, S/o.Late M.A.Aziz, Ex-DHMO, Government Unani Dispensary, Sompet, Srikakulam District.

...RESPONDENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.887 of 2004

ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

This Writ Petition is filed aggrieved by the order of the Andhra Pradesh Administrative Tribunal, Hyderabad ('the Tribunal' for brevity) in O.A.No.2786 of 1999 dated 26.11.2002 whereby, the order of punishment imposed on the respondent-applicant was set aside on the ground that the enquiry held, on charges of unauthorized absence, was in violation of principles of natural justice.

The respondent-applicant was initially appointed as a Daily Honorarium Medical Officer with effect from 01.01.1987. A show cause notice was issued to the respondent dated 16.07.1992 for his unauthorized absence to which he submitted an explanation on 28.07.1992. He filed O.A.No.2031 of 1994 seeking a direction to the first petitioner herein to permit him to discharge his duties. The said O.A. was allowed by the Tribunal by its order dated 23.10.1997 holding that in case the respondents (the petitioners herein) intended to terminate the services of the applicant, they ought to have passed

the orders after giving him adequate opportunity and that long and unauthorized absence in duty did not result in automatic termination of the services of the respondent-applicant. The Tribunal held that the respondent-applicant, who had joined duty as a Medical Officer on Honorarium basis, should be given an opportunity of being heard before terminating his services for the alleged irregularities. The respondents in the said O.A. were directed to give the applicant an opportunity to defend his case before passing an order discharging him from service and to take action as warranted under the APCS (CCA) Rules, 1991 ('the Rules' for brevity) after admitting him to duty.

It is stated that pursuant to the order of the Tribunal, the respondent-applicant was issued charge memo dated 12.11.1997 framing three charges (1) for his unauthorized absence from 09.01.1992 to 05.05.1992 without prior permission (2) for submission of forged and false attendance certificate from 01.08.1988 to 31.12.1991 and (3) though he had submitted leave application for the period from 01.02.1992 to 28.02.1992, he had demanded honorarium for the said period by submitting attendance certificate issued by the Sarpanch.

An Enquiry Officer was appointed and pursuant thereto; the order of

punishment was imposed. Aggrieved thereby, the respondent herein filed O.A.No.2786 of 1999 before the Tribunal. The Tribunal, by its order in O.A.No.2786 of 1999 dated 02.12.1999, set aside the order of termination with liberty to the official respondents (petitioners herein) to conduct an enquiry, if any, by furnishing the required documents, providing reasonable opportunity to the respondent-applicant and, depending upon its result, to take further action including regularization of his services. Aggrieved thereby, the petitioners herein have approached this Court and by order in Writ Petition No.16342 of 2000 dated 13.12.2001, the order in O.A.No.2786 of 1999 was set aside and the O.A. was remitted to the Tribunal with a direction to dispose of the same *de novo* after giving opportunity to both the parties and after consideration of the evidence to pass a reasoned judgment within a period of three months. Thereafter, the present order in O.A.No.2786 of 1999 dated 26.11.2002 was passed. The Tribunal held that certain documents, which form the basis of the charges had not been supplied to the respondent-applicant, that during the enquiry the Enquiry Officer had not recorded any separate statements of the witnesses examined in support of the charge, that the record also does not reveal that the respondent-applicant was called

upon to cross examine the persons who had deposed against him as required under Rule 20 (14) of the Rules. The Tribunal held that the respondent-applicant had also not been called upon to state his defence and also as to whether he would like to examine any witness in support of his case as required under Rule 20 (16 & 17) of the Rules. Since the enquiry was held in violation of the procedure prescribed, under the Rules, the impugned order of termination was set aside, leaving it open to the petitioners herein to conduct a *de novo* enquiry from the stage subsequent to the appointment of Enquiry Officer strictly following the Rules and thereafter to take appropriate action in the matter.

Before us, the Learned Government Pleader for Services would submit that since the respondent-applicant is a daily wage employee, it is wholly unnecessary for the petitioners herein to conduct an enquiry and as such the Tribunal had erred in holding that the enquiry as conducted was in violation of principles of natural justice. Learned Government Pleader would submit, all that the earlier order of the Tribunal required the petitioners herein to do was to give an opportunity to the

respondent-applicant to show cause as to why his services should not be terminated and that such an opportunity did not contemplate a departmental enquiry being held. It is wholly unnecessary for us to examine this question since the petitioners herein had, on their own volition appointed an Enquiry Officer and held a departmental enquiry. The departmental enquiry, so held against the Government servant, can only be in accordance with the Rules and inasmuch as the procedure prescribed under Rule 20 thereof, for imposition of the major punishment of termination from service, has not been complied with, the Tribunal was justified in holding that the enquiry conducted against the

respondent-applicant was in violation of the applicable Rules, against principles of natural justice and contrary to Rule 20 of the Rules. We see so reason to interfere with the order of the Tribunal in exercise of the jurisdiction under Article 226 of the Constitution of India, more so, since the petitioners herein have been given liberty to conduct the enquiry from the stage subsequent to appointment of the Enquiry Officer strictly following the Rules.

The Writ Petition is dismissed. However, in the circumstances, no costs.

_____

(B.PRAKASH RAO, J)

_____

(RAMESH RANGANATHAN, J)

13th September 2006
RRB

-